In the Supreme Court of the United States

D. N. HOLDEN AND LIZZIE HOLDEN, *Petitioners*,
vs.
JAMES A. STRATTON, TRUSTEE, *Respondent*
} No.....

BRIEF OF RESPONDENT IN OPPOSITION

There has been served upon the undersigned, as counsel for the respondent trustee, a typewritten brief and notice calling up for February 23d a petition for writ of *certiorari*. That petition is also typewritten. Nor has any printed copy of the record been, so far as we are aware, prepared or ordered to be prepared.

These irregularities may of themselves defeat this application, but other circumstances equally forcible may be drawn to your Honors' attention. The decree sought to be revised is one rendered by the Circuit Court of Appeals for the Ninth Circuit, January 16th, 1902. From that decree, the present petitioners, to whom it was adverse, appealed to this court. Here they were subsequently met by a motion upon our part to dismiss, for the reason that appeal would not lie to the decree complained of, since the latter had been based upon a petition for revision and review in the court of appeals, and could only be revised in this appellate court by other methods. Simultaneously with this motion on our part, the Holdens sought to remedy the defect by obtaining from one of the Justices of this court a certificate of the sort specially provided by

the Bankrupt Act to secure uniform construction of its provisions throughout the courts of the United States. That certificate, which is itself a sort of *certiorari,* was filed on the 20th of March, 1903, and it was before this court when you rendered your decision upon our motion to dismiss at the final hearing of *Holden v. Stratton,* October 22d, 1903. You regarded the certificate as well as the appeal improper and inadequate. Your decision was rendered November 16th, 1903, and since that time three months more have elapsed. The total period between the decree now sought to be revised by *certiorari* and the present time is more than two years, and this, we think, completely violates, without excuse, the rule laid down by this court in *The Conqueror,* 166 U. S. 110; *Ayres vs. Polsdorfer* 187 U. S. 585; *Spencer vs. Duplan Silk Co.* —— U. S. ——, December 21st, 1903. It may be added that in the three months since your decision in *Holden vs. Stratton,* not only has the mandate come down from your court to the court of appeals, and from the court of appeals to the district court, but the district court has itself made an order upon these mandates, requiring the surrender to the trustee of the two policies of insurance now in question, and these policies have under it been surrendered by the clerk to counsel for the trustee. Abundant opportunity has been afforded the petitioners to proceed properly. The trustee feels himself entitled to protest against more.

FREDERICK BAUSMAN,
Counsel for Stratton, Respondent.